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SAVING THE SEASHORE: MANAGEMENT PLANNING FOR THE COASTAL ZONE

The Walrus and the Carpenter
Were walking close at hand:
They wept like anything to see
Such quantities of sand.
"If this were only cleared away,"
They said, "it *would* be grand!"

It has been estimated that 53 percent of the population of the United States (some 106 million people) lives within fifty miles of the coasts of the Atlantic and Pacific Oceans, the Gulf of Mexico, and the Great Lakes. It is projected that 80 percent of the population, or 225 million people, will occupy that same area by the year 2000.¹ The increasing and often competitive demands of industry, commerce, resource development, recreation, waste disposal, and other such interests must be balanced against the harmful and often irreversible impact such activities have on the scenic beauty and fragile ecological systems of the coastal zone.

Until very recently, the planning and management of the coastal zone was almost entirely in the hands of local government.² This fragmentation of responsibility, coupled with the local bias in favor of development to increase revenue, has posed a serious threat to the maintenance of the natural virtues of the coastal zone.³ For this reason, it has become apparent that some form of federal and/or state regulation of the coastal zone is necessary if it is to serve as a resource for the nation, yet still be preserved for the enjoyment of future generations.

In recognition of this need, Congress passed, on October 12, 1972, the Coastal Zone Management Act of 1972.⁴ The following month the voters of California went to the polls and passed the initiative known as Proposition 20, now the California Coastal Zone Conservation Act of 1972.⁵ The federal act is designed only to provide

1. S. REP. NO. 753, 92d Cong., 2nd Sess. 2 (1972).

2. *Id.* at 4-5.

3. *Id.*

4. 16 U.S.C. §§ 1451-64 (Supp. 1973).

5. CAL. BUS. & PROF. CODE § 11528.2 (West Supp. 1973); CAL. PUB. RES. CODE §§ 27000-650 (West Supp. 1973).

incentive to the states to enact legislation for coastal zone management, and establishes guidelines for the kinds of state programs which will qualify for federal assistance; the California act provides a detailed blueprint for just such a program.

It is our intention to set forth the essential features of these acts, and to consider the ways in which they do or do not establish realistic mechanisms for the achievement of their stated goals. Although our focus will be primarily on the California act, attention will be given to shortcomings in the federal act as well, and suggestions will be made regarding possible avenues for the revision and improvement of the acts.

The California Act

General Provisions

Although several coastal zone conservation bills had been introduced in California prior to 1972,⁶ the legislature had been unable to pass a measure which would satisfy the divergent interests of conservationists, land developers, public utilities, and other lobbies with a stake in the coastal zone. Finally, on November 15, 1972, the matter was brought directly before the voters through an initiative known as Proposition 20. This initiative was modeled after a bill, AB 730, introduced in the 1970 session of the California legislature,⁷ and after a similar bill, AB 1471, introduced in the 1971 session.⁸ Proposition

6. See notes 7-8 *infra*.

7. CAL. LEGISLATURE, *Assembly Final History*, Reg. Sess., at 273 (1970); F DOOLITTLE, *LAND USE PLANNING AND REGULATION ON THE CALIFORNIA COAST: THE STATE ROLE* 45-6 (U.C. Davis Institute of Governmental Affairs Environmental Quality Series No. 9, 1972) [hereinafter cited as DOOLITTLE]. AB 730 was sponsored by Assemblymen Sieroty (D. Los Angeles), Dunlap (D. Vallejo), and Z'Berg (D. Sacramento). *Id.* "AB 730, sponsored by three liberal Democrats, had little real chance for success in a Republican controlled Legislature. In spite of the fact that these three men were long-time champions of conservation causes, they received little real support from organized groups or influential individuals. The fact that their bill was never amended merely indicates that it was never under serious consideration in committee or as a possible final measure on the subject. It was assigned to the Assembly Natural Resources and Conservation Committee on February 18, 1970, and moved from committee on August 21, 1970, without further action being taken." *Id.* at 48. AB 2131, sponsored by Assemblyman Wilson (R. San Diego), did pass the Assembly. Although AB 2131 was a relatively weak bill since it was restricted to regulating rural land use, it died in the senate. CAL. LEGISLATURE, *Assembly Final History*, Reg. Sess., at 658 (1970). Wilson later said that "corporate giants" had actively opposed his bill. F DOOLITTLE, *supra* at 47-50.

8. AB 1471 was sponsored by Assemblymen Sieroty (D. Los Angeles), Dunlap (D. Vallejo), Z'Berg (D. Sacramento) and Moretti (D. North Hollywood). It passed the assembly, but was defeated in the senate. CAL. LEGISLATURE, *Assembly Final History*, Reg. Sess., pt. 2, at 527 (1971); DOOLITTLE, *supra* note 7, at 59, 66-69.

20 now constitutes Division 18 (commencing with section 27000) of the Public Resources Code and is known officially as the California Coastal Zone Conservation Act of 1972.⁹ The ultimate purpose of the act is to generate a plan which will strike a balance between the interests which seek to exploit and develop the coastal zone and the need to conserve its bounty and preserve its beauty.¹⁰

The act declares that the coastal zone of California is a distinct and valuable resource, existing as a delicately balanced ecosystem, and that it is necessary to preserve and protect the coastal zone for current and succeeding generations.¹¹ The coastal zone is defined as seaward to the end of the state's jurisdiction¹² and landward to the highest elevation of the nearest coastal mountain range.¹³ An exception is made in Los Angeles, Orange, and San Diego Counties, in which the landward boundary is the shorter of the distance to the highest elevation of the nearest coastal mountain range or five miles from the mean high tide line.¹⁴

The California act intends to protect the coastal zone through a state-wide master plan which is to be called the California Coastal Zone Conservation Plan.¹⁵ To develop this plan, the California act creates the California Coastal Zone Conservation Commission¹⁶ and six regional commissions.¹⁷ Since local governments have not adequately protected the coastal zone in the past,¹⁸ the membership of the regional commissions is split evenly between representatives of local governments and members of the general public.¹⁹ This representation system prevents control of the regional commissions from falling into the hands of the local governmental interests, yet allows the commissions to draw upon their expertise.²⁰

The function of the regional commissions is to prepare recommen-

Some of the reasons given for the defeat of AB 1471 were that it was too weak, had too many exceptions, and was opposed by the Reagan administration. *Id.*

9. See note 5 *supra*.

10. CAL. PUB. RES. CODE § 27302 (West Supp. 1973).

11. *Id.* § 27001.

12. *Id.* § 27100; CAL. GOV'T CODE § 170 (West 1966).

13. CAL. PUB. RES. CODE § 27100 (West Supp. 1973).

14. *Id.*

15. *Id.* § 27001(b).

16. *Id.* § 27200.

17. *Id.* § 27201.

18. See text accompanying notes 2-3 *supra*.

19. CAL. PUB. RES. CODE § 27201 (West Supp. 1973). The act provides for the appointment of all regional commission members except city representatives, subsequently provided for in CAL. GOV'T CODE §§ 50270-81 (West Supp. 1973).

20. *Hearings on AB 640, 730, and 2131 Before the Cal. Legislature Assembly Natural Resources and Conservation Comm. on Coastal Zone Legislation* 24 (May 13, 1970).

dations to be submitted to the California Coastal Zone Conservation Commission no later than April 1, 1975, concerning those coastal areas to be reserved for specific uses, or within which specific uses are to be prohibited.²¹ The regional commissions are empowered to accept grants, contributions, and appropriations,²² to contract for outside professional assistance if necessary,²³ to pursue judicial remedies utilizing the legal representation of the State Attorney General,²⁴ and to adopt, after public hearings, any regulations deemed necessary to carry out the provisions of the California act.²⁵ In addition, the commissions may request and utilize the advice and services of all federal, state, and local agencies, and may request staff assistance from any federally recognized regional planning agency.²⁶

The California Coastal Zone Conservation Commission has final responsibility for drawing together the recommendations of the regional commissions and for submitting a comprehensive coastal zone plan to the legislature no later than December 1, 1975.²⁷ Membership of the state commission is to be composed of six representatives of the regional commissions and six members of the general public not members of a regional commission.²⁸ To facilitate its purpose in preparing the California Coastal Zone Conservation Plan, the state commission is endowed with the same powers and duties as the regional commissions.²⁹

The California Coastal Zone Conservation Plan, as the name suggests, is to be drawn primarily to conserve and protect the coast of California. The act requires that the plan be consistent with four stated objectives.³⁰ First, the overall quality of the coastal zone environment, including its amenities and aesthetic values, will be maintained, restored, and enhanced.³¹ Second, all species of living organism will continue to exist.³² Third, there will be an orderly, balanced utilization and preservation of coastal zone resources consistent with sound conservation principles.³³ Lastly, irreversible, irretrievable commitments of coastal zone resources will be avoided.³⁴

21. CAL. PUB. RES. CODE § 27320(b) (West Supp. 1973).

22. *Id.* § 27240(a).

23. *Id.* § 27240(b).

24. *Id.* § 27240(c).

25. *Id.* § 27240(d).

26. *Id.* § 27241.

27. *Id.* § 27320(c).

28. *Id.* § 27200.

29. *Id.* §§ 27240-43. See text accompanying notes 22-26 *supra*.

30. CAL. PUB. RES. CODE § 27302 (West Supp. 1973).

31. *Id.* § 27302(a).

32. *Id.* § 27302(b).

33. *Id.* § 27302(c).

34. *Id.* § 27302(d).

The act specifically sets forth components which must be included in the plan.³⁵ The public interest in the coastal zone is to be defined,³⁶ and ecological planning principles are to determine the suitability and extent of allowable development.³⁷ Provisions must be made for the demands of land use,³⁸ transportation,³⁹ conservation of scenic and natural resources,⁴⁰ public access,⁴¹ recreation,⁴² public services and facilities (including power plants),⁴³ ocean mineral and living resource utilization,⁴⁴ population distribution,⁴⁵ and educational and scientific uses.⁴⁶ Furthermore, some land or water will be reserved for specific uses, and certain uses will be prohibited entirely in some areas.⁴⁷ Finally, recommendations are to be made regarding the nature and scope of permanent governmental control over the coastal zone.⁴⁸

Interim Controls

One of the critical problems facing any state establishing a comprehensive coastal zone conservation plan is that developments during the years in which the plan is being formulated may destroy the very resources which the plan seeks to protect, thus rendering the plan largely obsolete before it is submitted. To avoid this result, it is necessary to create some form of interim regulatory mechanism.

The California Act contains provisions which vest such interim regulatory powers in the planning commissions. Any development commenced on or after February 1, 1973, within a 'permit area' (and on which substantial construction had not previously been performed) must be approved by the regional commission.⁴⁹ This permit area

35. *Id.* § 27304.

36. *Id.* § 27304(a).

37. *Id.* § 27304(b).

38. *Id.* § 27304(c)(1).

39. *Id.* § 27304(c)(2).

40. *Id.* § 27304(c)(3).

41. *Id.* § 27304(c)(4). See CAL. BUS. & PROF. CODE § 11610.5 (West Supp. 1973) which prohibits a city or county from granting approval of a development fronting the shore or coast unless reasonable public access is provided.

42. CAL. PUB. RES. CODE § 27304(c)(5) (West Supp. 1973).

43. *Id.* § 27304(c)(6).

44. *Id.* § 27304(c)(7).

45. *Id.* § 27304(c)(8).

46. *Id.* § 27304(c)(9).

47. *Id.* § 27304(d).

48. *Id.* § 27304(e).

49. *Id.* § 27400. See notes 58-60 & accompanying text *infra* for exceptions. The relevant part of section 27400 reads, "On or after February 1, 1973, any person wishing to perform any development within the permit area shall obtain a permit authorizing such development . . ." CAL. PUB. RES. CODE § 27400 (West Supp.

extends seaward to the limit of the state's jurisdiction (three miles), but is *not* coextensive with the coastal zone landward, being confined to a strip 1,000 yards wide above the mean high tide mark.⁵⁰ The area of jurisdiction of the San Francisco Bay Conservation and Development Commission is excluded,⁵¹ as is any urban land which was developed and stabilized to a residential density of four or more dwellings per acre on or before January 1, 1972.⁵² Also, local gov-

1973). The California Supreme Court, by a 4-3 vote with Justice Clark writing for the majority, construed "wishing to perform any development" as meaning "wishing to commence any development." *San Diego Regional Comm'n v. See the Sea, Ltd.*, 9 Cal. 3d 888, 513 P.2d 129, 109 Cal. Rptr. 377 (1973). This construction is based partially on an analysis of the section contained in the ballot pamphlet furnished voters which stated that permits would be required for "any *proposed* development." (court's emphasis). *Id.* at 891, 513 P.2d at 130, 109 Cal. Rptr. at 378. The majority also argued that the voters did not intend a moratorium, and that to require a permit for developments commenced before February 1, 1973, would have resulted in a moratorium because of procedural delays. *Id.* at 892, 513 P.2d at 130-31, 109 Cal. Rptr. 378-79.

Justice Mosk, writing for the dissent, argued that "wishing to perform any development" should be construed as "wishing to complete or carry out any development," which conforms to the primary definition of "perform." The dissent argued further that requiring permits for developments commenced before February 1, 1973, would not have created a moratorium as a practical matter. *Id.*

Although there may be some basis for the majority's holding, their opinion fails to give adequate attention to the public interest in the coastline. In the words of Justice Mosk, "It is disturbing, and perhaps significant, that the majority opinion gives only fleeting recognition to the salutary purposes of the act, and totally ignores the background serving as impetus for its enactment." *Id.* at 901, 513 P.2d at 138, 109 Cal. Rptr. at 386.

The majority is sympathetic to the interests of builders who performed substantial construction prior to February 1, 1973, although this construction may cause substantial harm to the coastline. These builders are now exempted from the act's requirements in part because it would be "unjust" to impose a permit requirement on builders who "relied on the absence of an express requirement." On the other hand, it is questionable whether the majority's decision was "just" to the California electorate which declared that "the California coastal zone is a distinct and valuable natural resource belonging to all the people [and] that the permanent protection of the remaining natural and scenic resources of the coastal zone is a paramount concern." CAL. PUB. RES. CODE § 27001 (West Supp. 1973). The majority's opinion should have accommodated the competing public and private interests involved in imposing a permit requirement on builders performing substantial work before February 1, 1973. A reasonable accommodation was suggested by the dissent—that the builder must apply for a permit, but that the commission must issue it. The regional commission should then be able to impose reasonable requirements which would allow the completion of the development without a "gross emasculation of the act." *Id.*

50. CAL. PUB. RES. CODE § 27104 (West Supp. 1973). If a body of water not subject to tidal action lies within the permit area, that body of water plus a strip 1,000 yards wide surrounding it is included in the permit area. *Id.* § 27104(b).

51. *Id.* § 27104(a).

52. *Id.* § 27104(c). Urban land is stabilized if 80 percent of the lots are built upon to the maximum density or intensity of use permitted by zoning regulations existing as of January 1, 1972. *Id.* § 27104(c)(2).

ernments may request that commercial or industrial areas zoned, developed, and stabilized for such use prior to January 1, 1972, be excluded.⁵³ Such exclusions, however, are subject to the condition that no substantial change in density, height, or nature of use occurs, and may be revoked by the regional commission after public hearing.⁵⁴

Permits will not be issued unless the regional commission is satisfied that the development will have no substantial adverse environmental impact, and that it is consistent with the findings and declarations of the purposes of the act and with the objectives it sets forth.⁵⁵ All permits are subject to conditions⁵⁶ designed to allow access to beaches and recreation areas, to reserve recreation areas and wildlife preserves, to provide for solid and liquid waste treatment, and to avoid danger of floods, landslides, erosion, siltation, or structural failure in event of an earthquake.⁵⁷ Exempted from such permit requirements are repairs and improvements to existing single-family residences,⁵⁸ construction projects which have acquired vested rights prior to November 8, 1972,⁵⁹ and maintenance dredging of existing navigation channels pur-

53. *Id.* § 27104(c)(2).

54. *Id.* § 27104(c).

55. *Id.* § 27402. For the findings and declarations of the Act as set forth in section 27001, see text accompanying note 11 *supra*. For the objectives of the act as set forth in section 27302, see text accompanying notes 30-34 *supra*.

56. Although the act uses the term "conditions," it appears that such conditions are in fact requirements, since the language used in the act is "shall be subject to reasonable terms and conditions." CAL. PUB. RES. CODE § 27403 (West Supp. 1973) (emphasis added).

57. *Id.*

58. *Id.* § 27405(a). The repairs and improvements must not exceed \$7,500. *Id.*

59. *Id.* § 27404 (West Cal. Legis. Serv., ch. 28, April 18, 1973), amending CAL. PUB. RES. CODE § 27404 (West Supp. 1973). The court's construction of section 27400 in *San Diego Regional Comm'n v. See the Sea, Ltd.*, 9 Cal. 3d 888, 513 P.2d 129, 109 Cal. Rptr. 377 (1973) (see note 49 *supra*) has the practical effect of nullifying the exemption provision of section 27404. Under section 27404, a party seeking an exemption based on vested rights is required to demonstrate that, prior to November 8, 1972, ". . . he has in good faith and in reliance upon the building permit diligently commenced construction and performed substantial work on the development and incurred substantial liabilities for work and materials necessary therefor . . ." CAL. PUB. RES. CODE § 27404 (West Cal. Legis. Serv., ch. 28, April 18, 1973), amending CAL. PUB. RES. CODE § 27404 (West Supp. 1973). But under the majority's construction of section 27400 in *See the Sea*, a developer is not required to secure a permit if he has performed substantial work prior to February 1, 1973. Thus, any person who would have qualified for an exemption under section 27404 is not required to obtain a permit under section 27400. The majority argued that section 27404 exempts some persons who are required to obtain permits under section 27400. These are persons who acted in reliance on a building permit obtained prior to November 8, 1972, and demolished structures or incurred substantial expenses and liabilities preparatory to construction. *Id.* at 893, 513 P.2d at 132, 109 Cal. Rptr. at 380.

suant to a permit from the United States Army Corps of Engineers.⁶⁰

An affirmative vote of a *majority* of the total authorized membership of the regional commission, or of the state commission on appeal, is required to authorize the issuance of a permit.⁶¹ For certain specified activities, such as dredging, filling, reducing the size of beaches, restricting access to beaches, impairing the view from coastal highways, or adversely affecting water quality, commercial or sport fisheries, or agricultural uses currently existing, permit applications must be approved by a *two-thirds* vote of the total authorized membership of the regional commission, or of the state commission on appeal.⁶² The denial of a permit has the same effect as an injunction against development,⁶³ but it avoids some of the difficulties involved in the pursuit of equitable remedies. Thus there is no requirement of a showing of immediate and irreparable harm, no bond to be posted, and no need for a "balancing of the equities" test. If there is any showing of substantial adverse environmental or ecological effect, the permit will be denied.⁶⁴

Any development within the permit area not authorized by a regional commission constitutes a violation of the act,⁶⁵ and renders the violator subject to a civil fine not to exceed \$10,000.⁶⁶ In addition, a development performed in violation of the act carries a penalty of \$500 for each day in which the violation persists.⁶⁷ Appeal of a decision of a regional commission may be had to the state commission, which may reverse, affirm, or modify the decision or action of

The majority apparently has misinterpreted section 27404 which requires *actual* commencement of construction and substantial work prior to November 8, 1972. There is no indication that the section included, within its definition of vested rights, preparatory steps to construction, such as demolition. The regional commission argued that the exemptions provided in section 27404 implied that all others who did not qualify for these exemptions must obtain permits. *Id.* at 892, 513 P.2d at 131, 109 Cal. Rptr. at 379. The majority rejected this argument on the basis of its analysis of section 27400 and because it would be "unjust," in the absence of an express requirement, to imply a permit requirement which would result in costly delay. *Id.* at 892-93, 513 P.2d at 131-32, 109 Cal. Rptr. at 379-80. The dissent, however, contended that a reasonably prudent businessman would have been aware of the permit requirement and would have deferred construction for a few weeks and applied to the regional commission for a permit after February 1, 1973. *Id.* at 901, 513 P.2d at 137, 109 Cal. Rptr. at 385.

60. *Id.* § 27405(b).

61. *Id.* § 27400.

62. *Id.* § 27401.

63. *Id.* § 27400; CAL. CODE CIV. PROC. § 525, 1209(5) (West 1954, 1972).

64. CAL. PUB. RES. CODE § 27402(a) (West Supp. 1973).

65. *Id.* § 27400. Any violation of the act is subject to exceptions mentioned in notes 58-60 & accompanying text *supra*.

66. CAL. PUB. RES. CODE § 27500 (West 1973).

67. *Id.* § 27501.

the regional commission.⁶⁸ The act also provides that "[a]ny person, . . . including an applicant for a permit, aggrieved by the decision or action of the commission or regional commission shall have a right to judicial review"⁶⁹

Thus, while generating a plan for the regulation of the coastal zone, the regional commissions must also regulate interim development. The specific criteria on which a development is to be approved, therefore, may be expected to remain inchoate during the early formulation of the plan. Suggestions as to how this paradox might be resolved ranged from that of Councilman Roy Holm, City of Laguna Beach, who urged a complete moratorium on development,⁷⁰ to that of Lieutenant Governor Ed Reinecke, who felt that interim controls need not be imposed at all.⁷¹

Drawing upon the experience of the San Francisco Bay Conservation and Development Commission, the most sensible approach would appear to be the granting of such permits as are not in conflict with the spirit and objectives of the act, and the denial of permits where there is any doubt in the matter.⁷² Since limited coastal resources may be irretrievably lost, or delicate ecological systems irreparably damaged, it is clearly in the public interest to err on the side of caution.

In apparent accord with this position, the California act specifically places the burden of proof upon the applicant for a development permit.⁷³ This provision represents a departure from the common law rule that the burden of proving harm rests upon one who objects to the utilization of resources, but in the days of the formulation of this common law rule there was neither the scarcity of resources nor the sharply competitive demands placed upon them that exists today.⁷⁴ Allocation of the burden of proof often serves as an effective tool for shaping social policies, and since it is imperative that the need for environmental protection and conservation be adequately reflected in

68. *Id.* § 27423. The California act does not specify what standards are to be applied by the state commission when it hears an appeal. Presumably, the state commission would apply the same standards as the regional commission. See note 55 and accompanying text *supra*.

69. CAL. PUB. RES. CODE § 27424 (West Supp. 1973). For a discussion of this provision, see text accompanying notes 90-105 *infra*.

70. *Hearings on Public Interest in the Coastline Before the Cal. Legislature Assembly Natural Resources and Conservation Comm. on Coastal Zone Legislation* 233 (Dec. 18-19, 1969).

71. *Id.*, at 14.

72. *Id.*, at 203.

73. CAL. PUB. RES. CODE § 27402(b) (West Supp. 1973).

74. J. Krier, *Environmental Litigation and the Burden of Proof*, in *LAW AND THE ENVIRONMENT* 106-08 (M. Baldwin & J. Page, Jr. eds. 1970).

the law, the consumer of natural resources should bear the responsibility for justifying his actions.⁷⁵

It should be noted that the commissions are empowered to call upon their own expert staff, upon other related agencies, and upon outside professionals for assistance.⁷⁶ It is important to provide the regional commissions with access to independent expert opinions so that the commissions will not be forced to rely solely upon the information supplied by the applicant.

Citizen Suits

One of the most frustrating obstacles in the path of effective citizen participation in the struggle for environmental protection has been judicial insistence on a showing of standing to sue. In the opinion of Ramsey Clark:

[Standing] limitations are anachronisms that are very costly to America today. There isn't any single cause that contributes more to the frustrations of modern life than the powerlessness of people to affect things of vital importance to them.

You can't sue; you have just got to live with it. If the garbage isn't collected, if the park you sit in is being leveled by bulldozers, you can't do anything. We can't go on like that. People must have the power through legal process to affect things that are important to them.

These old ideas of standing to sue which came from the 18th and 19th centuries are inadequate to mass population.⁷⁷

Although the California State Attorney General can obtain equitable relief to prevent impairment, pollution, or destruction of the environment,⁷⁸ there are no provisions in the California codes specifically enabling a private citizen to maintain a suit, and such suits may be barred by lack of standing or failure to state a cause of action. Obviously, however, it is simply not possible for the Office of the Attorney General to investigate and prevent the manifold offenses against the environment continually taking place throughout the State of California.

In recognition of this, the California Coastal Zone Conservation Act has provided a number of ways in which *any* person may enforce the provisions of the act.⁷⁹ These "citizen suits" may be divided into

75. *Id.* at 108-19.

76. CAL. PUB. RES. CODE §§ 27240(b), 27241-42 (West Supp. 1973); CAL. ADM. CODE tit. 14, § 1318(a).

77. *Hearings on S. 3575 Before the Subcomm. on Energy, Natural Resources, and the Environment of the Senate Comm. on Commerce*, 91st Cong., 2d Sess., ser. 80, at 26 (1970) (testimony of Ramsey Clark).

78. CAL. GOV'T CODE § 12607 (West Supp. 1973).

79. CAL. PUB. RES. CODE §§ 27425-27 (West Supp. 1973). In addition to

three categories: suits against violators of the act, appeals to the state commission concerning the approval of a permit by a regional commission, and petitions for writs of mandate.

Suits Against Violators of the California Act

Standing is given to any person to maintain an action for declaratory and equitable relief to restrain violations of the California act,⁸⁰ and also to bring suit for the recovery of the civil penalties provided for in the act.⁸¹ To mitigate the financial burden upon the person bringing such an action, the costs of the litigation, including reasonable attorney's fees, are to be awarded to a successful plaintiff.⁸²

"Costs", as used in the California act, should be interpreted to include reasonable expert witness fees,⁸³ since they are as much a cost of litigation as attorney's fees. Under current California case law, the fees of an expert employed by one of the parties are not normally allowed as costs.⁸⁴ However, fees of court appointed experts,⁸⁵ and of those employed by the parties,⁸⁶ may be awarded at the discretion of the courts. Unfortunately, such precedents are not very helpful since they essentially involve litigation between private parties, espousing private interests.

Since expert testimony is often required in environmental suits, it would be advisable to have a provision in the California act clearly allowing reasonable expert witness' fees. Since the individual plaintiff who sues to enforce the provisions of the act does so on behalf of the people of California, for whose benefit and in whose name the act was passed, such actions should not be discouraged by the high cost of obtaining the necessary expert testimony.⁸⁷ Precedent for such

these citizen suits, the act provides that the state attorney general shall provide legal representation for the regional and state commissions. *Id.* § 27240(c) (West Supp. 1973).

80. *Id.* § 27425.

81. *Id.* § 27426. For a discussion of civil penalties, see text accompanying notes 65-67 *supra*.

82. CAL. PUB. RES. CODE § 27428 (West Supp. 1973).

83. *Cf.* Kennedy v. Byrum, 201 Cal. App. 2d 474, 483, 20 Cal. Rptr. 98, 103 (1962) (fees of court-appointed expert witness included as costs under section 731 of California Evidence Code which provides for recovery of such fees as costs) (*semble*).

84. Rabinowitch v. California W. Gas. Co., 257 Cal. App. 2d 150, 161-62, 65 Cal. Rptr. 1, 8 (1967).

85. Kennedy v. Byrum, 201 Cal. App. 2d 474, 483, 20 Cal. Rptr. 98, 103 (1962) (*semble*).

86. Rosenthal v. Rosenthal, 215 Cal. App. 2d 140, 147-48, 30 Cal. Rptr. 49, 53 (1963).

87. Karaganis, *Public Suits: The Search for Evidence*, in ENVIRONMENTAL LAW 54-60 (C. HASSETT ed. 1971).

a provision, although discretionary, does exist in the Clean Air Amendments of 1970⁸⁸ and the Water Pollution Control Act of 1972.⁸⁹

Appeals to the State Commission

In addition to citizen suits for redressing violations of the California act, the act also provides that any applicant or any person aggrieved by the approval of a permit by a regional commission may appeal to the state commission.⁹⁰ The right to appeal the granting of a permit is therefore not limited to the *applicant* for a permit, but extends to any person "aggrieved" by such a decision.

Unfortunately, it is not at all clear what was intended by the use of the word "aggrieved." Since "aggrieved" does not appear in those sections granting power to any person to seek declaratory and equitable relief and civil penalties for violations of the act,⁹¹ it may be argued that its inclusion in the sections dealing with permit appeals implies the imposition of a requirement of standing, based on some showing of actual or threatened harm to the individual seeking to prevent the issuance of a permit.⁹² However, such a position is inconsistent with the overall intent of the California act, which specifically declares the coastal zone to be a resource of "all the people," and that it must be preserved and protected "for the enjoyment of the current and succeeding generations."⁹³ It is clear that the improper granting of development permits by the regional commission is an injury to all the people, and that everyone who wishes the coastal zone to be preserved and protected for himself and for his descendants is aggrieved by such a decision. Thus, the objectives of the act may be furthered most effectively by viewing the use of the word "aggrieved" as unfortunate drafting, rather than as a limitation on standing.

Such an interpretation of aggrieved is consistent with the rule applied in *Estate of Colton*,⁹⁴ wherein the California Supreme Court held that a party was aggrieved and thus entitled to appeal if he had "an interest recognized by law in the subject matter of the judgment, which

88. 42 U.S.C. § 1857h-2(d) (Supp. 1973).

89. 33 U.S.C. § 1365(d) (Supp. 1973).

90. CAL. PUB. RES. CODE § 27423 (West Supp. 1973).

91. *Id.* §§ 27425-26.

92. Clearly, section 27423 does not authorize an aggrieved third party to appeal the decision of a regional commission denying a permit. *Id.* § 27423.

93. *Id.* § 27001.

94. 164 Cal. 1, 127 P. 643 (1912); *accord*, *Buffington v. Ohmert*, 253 Cal. App. 2d 254, 255, 61 Cal. Rptr. 360, 361 (1967). *But cf.* *County of Alameda v. Carleson*, 5 Cal. 3d 730, 736-37, 488 P.2d 953, 957, 97 Cal. Rptr. 385, 389 (1971) (stricter standard applied requiring that party's interest be immediate, pecuniary, and substantial, and not nominal or remote consequence of judgment). If the showing of a pecuniary injury were required, there might be no person who had standing since a

interest is injuriously affected by the judgment."⁹⁵ Under the California act, the subject matter of a permit appeal is the coastal zone of California, which has been declared to be "a distinct and valuable natural resource belonging to all the people"⁹⁶ This declaration creates an interest recognized by law in individual plaintiffs who are thus aggrieved by the issuance of a permit.⁹⁷

Precedent for such an interpretation may be found in other areas of public interest litigation, wherein the courts have demonstrated a willingness to interpret statutory terms liberally in order to further legislative policy. In *Barquis v. Merchants Collection Ass'n*,⁹⁸ for example, the court broadly interpreted the term "unfair business practice" to include the practice of a collection agency which filed complaints in distant counties to gain an unconscionable advantage over its alleged debtors. This interpretation was prompted by a finding of legislative concern for adequate protection of the consumer class.⁹⁹ In the field of environmental law the California Supreme Court, in *Friends of Mammoth v. Board of Supervisors*¹⁰⁰ broadly interpreted the word "project," as used in the California Environmental Quality Act of 1970,¹⁰¹ to include the issuance of a conditional use or building permit.¹⁰² The court's decision was based in part on "what appears to be a clear legislative mandate that the [Environmental Quality Act] be given a broad construction and that it apply to private actions for which a permit is necessary"¹⁰³

Furthermore, the California act was passed not by the California legislature, but directly by the electorate in the form of Proposition

coastal development might increase tax revenues and property values. The *Carleson* test should be rejected as inapplicable to environmental suits where economic loss is essentially irrelevant.

95. Estate of Colton, 164 Cal. 1, 5, 127 P. 643, 645 (1912).

96. CAL. PUB. RES. CODE § 27001 (West Supp. 1973).

97. In the event that a court is reluctant to grant standing to the general public to appeal the issuance of a permit, an analogy to a writ of mandate may prove persuasive. The individual seeking the appeal is enforcing a public right in the coastal zone which has been thwarted by public officials. Since the appeal functions as a writ of mandate, it is logical and reasonable to apply the standing requirements of the writ. See text accompanying notes 106-16 *infra*.

98. 7 Cal. 3d 94, 496 P.2d 817, 101 Cal. Rptr. 745 (1972).

99. *Id.* at 107-10, 496 P.2d at 826-28, 101 Cal. Rptr. at 754-56; cf. *Diaz v. Kay-Dix Ranch*, 9 Cal. App. 3d 588, 591-93, 88 Cal. Rptr. 443, 444-46 (1970) (court indicated that practice of knowingly employing Mexican nationals, present in United States in violation of federal immigration laws, could constitute unfair business practice).

100. 8 Cal. 3d 247, 502 P.2d 1049, 104 Cal. Rptr. 761 (1972).

101. CAL. PUB. RES. CODE §§ 21000-174 (West Supp. 1973).

102. *Friends of Mammoth v. Board of Supervisors*, 8 Cal. 3d 247, 257, 502 P.2d 1049, 1055, 104 Cal. Rptr. 761, 767 (1972).

103. *Id.*

20. Precedent for a liberal interpretation of the language of this type of legislation may be found in the cases of *Kaiser v Hopkins*¹⁰⁴ and *Burger v Employees' Retirement System*,¹⁰⁵ which state that courts will interpret measures adopted by popular vote according to the popular or general sense of the words, unless the very subject or text suggests a technical sense.

It is important that such a liberal interpretation of the word "aggrieved" as used in the act be made, since it is crucial to allow the general public, by the mechanism of citizen suits, to monitor the decisions of the various commissions, and to insist that their actions display the kind of farsighted good judgment which is needed for the protection of the coastal zone.

Writs of Mandate

The California act also provides for a third type of citizen suit—a petition for a writ of mandate against either the state commission or a regional commission.¹⁰⁶ The writ of mandate differs from the provision for permit appeals in that it is an action in a state court against a commission,¹⁰⁷ is not restricted to challenging the issuance of permits,¹⁰⁸ and is grounded in a body of case law¹⁰⁹ defining who is an appropriate petitioner.

Along with the issuance of permits, the regional commissions are charged with the performance of other important duties. They are, for example, required to prepare conclusions and recommendations regarding those areas to be reserved for specific uses, or within which certain uses are to be prohibited.¹¹⁰ They must also file annual progress reports with the governor and the legislature.¹¹¹ The general public therefore should and does have the authority to bring citizen suits, in the form of petitions for writs of mandate, to ensure the proper performance of all the duties of the commissions.

There are also procedural differences between an appeal to the

104. 6 Cal. 2d 537, 58 P.2d 1278 (1936).

105. 101 Cal. App. 2d 700, 226 P.2d 38 (1951).

106. CAL. PUB. RES. CODE § 27424 (West Supp. 1973).

107. CAL. CODE CIV. PROC. §§ 1084-97 (West 1955), *as amended* (West Supp. 1973).

108. CAL. PUB. RES. CODE § 27424 (West Supp. 1973). Since section 27424 is placed with provisions concerned with permits, it could be argued that section 27424 is restricted to reviewing the issuance of permits. However, sections 1084-97 of the Code of Civil Procedure would then be the basis for reviewing commission decisions which do not concern the issuance of permits. CAL. CODE CIV. PROC. §§ 1084-97 (West 1955), *as amended* (West Supp. 1973).

109. See note 114 *infra*.

110. CAL. PUB. RES. CODE § 27320(b) (West Supp. 1973).

111. *Id.* § 27600(a).

state commission and a petition for writ of mandate. An appeal must be filed within ten days of the decision of the regional commission, and must comply with the form established by the state commission.¹¹² Petitions for writs of mandate, however, are state court proceedings, and must therefore comply with the statutory requirements of the California Code of Civil Procedure, which requires, for example, a verified petition of the party beneficially interested and adequate notice to all parties before the writ will issue.¹¹³

Perhaps the most significant difference between a petition for a writ of mandate and an appeal to the state commission is the body of case law defining the standing requirements for a writ of mandate. The courts have been liberal in granting standing to an individual citizen to enforce a public duty concerning some public right, in that a plaintiff need not show that he has a legal or special interest in the subject matter; it is sufficient that he is interested as a citizen in having the laws executed and the public duty in question enforced.¹¹⁴

Although the California act states that a writ of mandate may be sought by an applicant for a permit or by any person aggrieved by a decision or action of a commission,¹¹⁵ this should not be interpreted as adding to the standing requirements for a writ. Once again, since the protection of the coastal zone will be furthered by an active public monitoring the actions of its servants, the same policy consideration which favors the granting of standing to all citizens to appeal the issuance of permits is equally applicable here.¹¹⁶

The Federal Act

General Provisions

The Federal Coastal Zone Management Act of 1972,¹¹⁷ unlike the California act, does not purport to erect any agency for the achievement of its goals, but is designed instead to provide an incentive for the states to establish their own coastal zone management programs.

112. *Id.* §§ 27240(d), 27420(c); CAL. ADM. CODE tit. 14, § 13700.

113. CAL. CODE CIV. PROC. §§ 1084-97 (West 1955), *as amended* (West Supp. 1973).

114. *Diaz v. Quitonano*, 268 Cal. App. 2d 807, 811-12, 74 Cal. Rptr. 358, 362 (1969), *quoting* *Board of Social Welfare v. County of Los Angeles*, 27 Cal. 2d 98, 100-01, 162 P.2d 627, 628-29 (1945).

115. CAL. PUB. RES. CODE § 27424 (West Supp. 1973).

116. Citizen suits will help ensure the integrity and wisdom of the commissions' decisions, but there are other provisions which act as safeguards. There are rules forbidding conflicts of interest for members of the commissions. *Id.* §§ 27230-34. Public representatives sit on the commissions, *Id.* §§ 27200-01, and all meetings are open to the public. *Id.* § 27224.

117. 16 U.S.C. §§ 1451-64 (Supp. 1973).

Congress states in its Declaration of Policy that it is in the national interest to encourage the states to establish management programs which will wisely allocate the land and water resources of the coastal zone. Full consideration must be given to the ecological, cultural, historic, and aesthetic values, as well as to needs for economic development.¹¹⁸ In addition, the federal act seeks to preserve, protect, develop, and restore resources of the coastal zone for this and succeeding generations,¹¹⁹ and to encourage the cooperation and coordination of all federal, regional, state, and local agencies involved in coastal zone management.¹²⁰

The definition of the coastal zone used in the federal act is less specific than the California definition,¹²¹ comprising coastal waters and adjacent shorelands "strongly influenced by each other," extending seaward to the limit of the United States territorial waters but landward only to the extent necessary to control shorelands.¹²² Any state and certain specific territories bordering on the Atlantic or Pacific Oceans, the Gulf of Mexico, Long Island Sound, or the Great Lakes is eligible to receive annual federal grants to assist in the development of coastal zone management programs.¹²³ These grants, authorized by the Secretary of Commerce, may not exceed two-thirds of the cost of the program development, and are limited to a period of three years.¹²⁴ No grant to any one state may be more than ten percent nor less than one percent of the total amount,¹²⁵ nine million dollars annually, which has been appropriated under this act.¹²⁶

There are six specific items which must be included in the management programs of states seeking grants.¹²⁷ The program must describe the state's organizational structure,¹²⁸ its control mechanisms,¹²⁹ and guidelines on priorities.¹³⁰ In addition, there must be a description of the boundaries of the state's coastal zone,¹³¹ a list of permis-

118. *Id.* § 1452(b).

119. *Id.* § 1452(a).

120. *Id.* §§ 1452(c)-(d).

121. See text accompanying notes 12-14 *supra*.

122. 16 U.S.C. § 1453(a) (Supp. 1973).

123. *Id.* §§ 1453(c), 1454. The specified territories are Puerto Rico, the Virgin Islands, Guam and American Samoa. *Id.* § 1453(c).

124. *Id.* § 1454(c).

125. *Id.* § 1454(e).

126. *Id.* § 1464(a)(1). It is likely that sections 27302 and 27304 of the California Act are sufficiently broad to permit California to qualify for grants under the federal act. See text accompanying notes 30-48 *supra*.

127. 16 U.S.C. §§ 1454(a)-(b) (Supp. 1973).

128. *Id.* § 1454(b)(6).

129. *Id.* § 1454(b)(4).

130. *Id.* § 1454(b)(5).

131. *Id.* § 1454(b)(1).

sible land and water uses,¹³² and an inventory of areas of particular concern.¹³³ Subsequent grants may not be made to a state unless the Secretary of Commerce is convinced that the initial grant has been properly utilized in the development of a satisfactory program.¹³⁴

Once the coastal zone management plans have been developed, the secretary may authorize additional grants on the same basis (one to ten percent of total appropriation, but not more than two-thirds the total cost) for the purposes of administering the program.¹³⁵ Before such grants may be made, the secretary must make a number of findings.¹³⁶ First, he must determine that the state has the organization¹³⁷ and authority¹³⁸ to implement such a program, including the power to administer land and water use regulations, control development, resolve conflicts among competing interests,¹³⁹ and acquire fee simple and lesser interests in land.¹⁴⁰ The state must also have some method of controlling land and water uses, either directly or by review.¹⁴¹ Second, the state must provide for public hearings,¹⁴² an opportunity for the full participation of all relevant governmental agencies and of all interested parties, public and private,¹⁴³ and a mechanism for communication among all such interested parties.¹⁴⁴ Third, the plan must be developed in accordance with the rules and regulations promulgated by the secretary,¹⁴⁵ must be coordinated with existing management plans,¹⁴⁶ and, in addition, must reflect national¹⁴⁷ and

132. *Id.* § 1454(b)(2).

133. *Id.* § 1454(b)(3).

134. *Id.* § 1454(c). For guidance purposes, Congress suggests that the following be included in a management program: (1) tides and currents, including their effects on beaches and shorelines; (2) floods and flood damage protection; (3) erosion, land stability, climatology, and meteorology; (4) ecology, including estuarine habitats; (5) recreation; (6) open space, physical and visual access; (7) navigation and commercial fishing; (8) present ownership and present uses; (9) present laws and regulations at all levels; (10) present population and future trends, including anticipated impact; and (11) other relevant factors. S. REP. NO. 753, 92d Cong., 2nd Sess. 11 (1972).

135. 16 U.S.C. § 1455 (Supp. 1973).

136. *Id.* § 1455(c).

137. *Id.* § 1455(c)(6).

138. *Id.* § 1455(c)(7).

139. *Id.* § 1455(d)(1).

140. *Id.* § 1455(d)(2).

141. *Id.* § 1455(e)(1).

142. *Id.* § 1455(c)(3).

143. *Id.* § 1455(c)(1).

144. *Id.* § 1455(c)(2)(A).

145. *Id.* § 1455(c)(2)(B).

146. *Id.* § 1455(c)(1).

147. *Id.* § 1455(c)(8).

regional¹⁴⁸ interests and establish procedures for designating areas as recreational, ecological, or aesthetic reserves.¹⁴⁹ Finally, the governor must have approved the plan¹⁵⁰ and appointed a single agency to receive and administer grants.¹⁵¹ Assuming that all of these criteria are met, the state, with the approval of the secretary, is free to allocate the federal funds which it receives to local or regional agencies, and to develop a program in segments, if it so desires, so that attention may be given where it is most urgently needed.¹⁵²

The Secretary of Commerce must coordinate his functions with all other interested federal agencies,¹⁵³ and continually review the management programs and the performance of each state.¹⁵⁴ The federal act also has provision for keeping records of plans, projected costs, and fund allocation,¹⁵⁵ for the establishment of an advisory committee to assist the secretary in deciding policy issues,¹⁵⁶ for the creation of estuarine sanctuaries,¹⁵⁷ for the preparation of an annual report,¹⁵⁸ and for the promulgation of necessary rules and regulations.¹⁵⁹

Voluntary Compliance

One of the most obvious shortcomings of the federal act is its reliance on voluntary compliance by the states. Despite findings by Congress that the management and preservation of the coastal zone is a matter of utmost concern, participation in coastal zone management programs is *not required* of the coastal states. Instead, it is stated:

The committee hopes that the States will move forthrightly to find a workable method for state, local, regional, federal and public involvement in the regulation of non-federal land and water use within the coastal zone.¹⁶⁰

148. *Id.* § 1455(e)(2).

149. *Id.* § 1455(c)(9).

150. *Id.* § 1455(c)(4).

151. *Id.* § 1455(c)(5).

152. *Id.* §§ 1455(f), 1455(h).

153. *Id.* § 1456(a).

154. *Id.* § 1458(a).

155. *Id.* § 1459.

156. *Id.* § 1460.

157. *Id.* § 1461. "Estuarine sanctuary means a research area which may include any part or all of an estuary, adjoining transitional areas, and adjacent uplands, constituting to the extent feasible a natural unit, set aside to provide scientists and students the opportunity to examine over a period of time the ecological relationships within the area." *Id.* § 1453(e).

158. *Id.* § 1462.

159. *Id.* § 1463.

160. S. REP. NO. 753, 92d Cong., 2nd Sess. 5-6 (1972).

So tenuous a hope is inconsistent with the findings of the committee, expressed in the very next sentences:

In light of the competing demands and the urgent need to protect our coastal zone, the existing institutional framework is too diffuse in focus, neglected in importance, and inadequate in the regulatory authority needed to do the job. The key to more effective use of the coastal zone in the future is introduction of management systems permitting conscious and informed choices among the various alternatives. The aim of this legislation is to assist in this very critical goal.¹⁶¹

Although the aim of the legislation may be admirable, it will not be able to reach its goal unless it is given sufficient impulse to overcome the inertia of the states. Merely making funds available to those states which choose to establish acceptable programs is not sufficient. Indeed, it has been suggested that the failure to establish such programs in the past has been due to a lack of policy commitment, rather than a shortage of funds, since any state could raise the sums of money involved in such legislation without great difficulty.¹⁶² In order to ensure that the goal of this legislation is met, compliance by the coastal states should be made mandatory. In the event that a state refuses, participation should be coerced by penalties (for example, restriction of federal funds for related programs such as the Highway Trust Fund, the Land and Water Conservation Fund, or the Airport and Airway Development Fund)¹⁶³ or, if necessary, by establishing direct federal management of the coastal zone of any state which fails to act on its own within a reasonable time.¹⁶⁴ Precedent for this type of action is found in other legislation dealing with air and water pollution, and such penalties have been found both desirable and necessary.¹⁶⁵

Interim Controls

The federal act contains no provision for interim controls during the planning of coastal zone management programs. It appears that this position was consciously taken; as expressed by Senator Hollings, "I don't think we want to legislate affirmatively what they may or may

161. *Id.*

162. *Hearings on H.R. 2492, 2493, and 9229 Before the Subcomm. on Oceanography of the House Comm. on Merchant Marine and Fisheries*, 92d Cong., 1st Sess., ser. 16, at 257 (1971) (testimony of Dr. Georg Treichel).

163. *Id.*, at 292 (letter from Larry E. Naake to the Committee Chairman, June 21, 1971).

164. *Id.*, at 257 (testimony of Dr. Georg Treichel).

165. *Hearings on S. 2802, 2393, 3118, 3183, and 3460 Before the Subcomm. on Oceanography and the Atmosphere of the Senate Comm. of Commerce*, 91st Cong., 1st & 2nd Sess., ser. 59, pt. 2, at 1041 (1969-1970); 42 U.S.C. §§ 1857c-5 to-7 (Supp. 1973); 33 U.S.C. § 1342 (Supp. 1973).

not do while they are planning."¹⁶⁶ The reason for this decision, however, is not at all clear. Indeed, this failure to provide for interim permits to control development of the coastal zone during planning stages is another serious inadequacy in the federal act.¹⁶⁷ Provision for interim permits is not even one of the guidelines set down for the creation of state coastal zone management plans. Fortunately, some coastal states have recognized the necessity for interim controls and have adopted statutes which reflect this concern.¹⁶⁸ However, many of these statutes are severely limited.¹⁶⁹ The federal act should be amended, consistent with its declared goal of assuring the preservation of the coastal zone now and in the future, to require the states to establish strong interim controls as a prerequisite to the granting of federal funds.

Citizen Suits

The federal act is also deficient in failing to make any provision for citizen suits as an element of the state coastal zone management plans, despite testimony favorable to such a position, and despite ample precedent in other federal acts.¹⁷⁰ Although Congress has passed legislation which would allow judicial review of the actions of the Secretary of Commerce in administering the federal act,¹⁷¹ this legislation would apply only to federal agencies, and not to the states. Provision for citizen suits is thus needed as a part of each individual state management plan.

Under current law, a party has standing to sue in the federal courts on environmental issues only when he has suffered or will suffer some substantial harm, economic or otherwise.¹⁷² Again, however,

166. *Hearings on S. 582, 632, and 992 Before the Subcomm. on Oceans and Atmosphere of the Senate Comm. of Commerce*, 92d Cong., 1st Sess., ser. 15, at 193 (1971).

167. For a discussion of interim controls in the California Act, see text accompanying notes 49-76 *supra*.

168. CAL. PUB. RES. CODE §§ 27000-650 (West Supp. 1973); DEL. CODE ANN. tit. 7, § 704 (Supp. 1972); FLA. STAT. ANN. §§ 253.123-.124 (1972); IND. ANN. STAT. §§ 27-623, 27-627 (1970); N.H. REV. STAT. ANN. § 483-A.1 (1968); WASH. REV. CODE ANN. § 43.51.685 (1970).

169. For example, the Florida and Washington statutes, apply only to state lands. FLA. STAT. ANN. §§ 253.123-.124 (1972); WASH. REV. CODE ANN. § 43.51.685 (1970).

170. *Hearings on S. 2802, 2393, 3118, 3183, and 3460 Before the Subcomm. on Oceanography and the Atmosphere of the Senate Comm. of Commerce*, 91st Cong., 1st & 2nd Sess., ser. 59, pt. 2, at 1022, 1042; 33 U.S.C. § 1365 (Supp. 1973); 42 U.S.C. § 1857h-2 (Supp. 1973); *Id.* § 4911. See Comment, *Standing on the Side of the Environment: A Statutory Prescription for Citizen Participation*, 1 ECOLOGY L.Q. 561 (1971).

171. Administrative Procedure Act, 5 U.S.C. §§ 701-06 (1970).

172. *Sierra Club v. Morton*, 405 U.S. 727 (1972); see Comment, *Mineral King*:

such a test is inadequate to meet the demands of a growing society in safeguarding the coastal zone by citizen action. Although some states have authorized citizen suits to protect coastal areas, a strong, mandatory provision to that effect should be made an integral part of the federal act.

Conclusion

The California Coastal Zone Conservation Act is designed to generate a plan for the wise and harmonious management of the unique and highly valuable resources of California's coastline. Planning commissions, at both state and regional levels, are charged with the responsibility of presenting such a plan to the California legislature. These commissions are also empowered to control development during the formulation of the plan. Thus, California seemingly has complied with the requirements of the Federal Coastal Zone Management Act, and should be eligible to receive a share of the financial stimulus provided by the federal act.

While it is encouraging to see that the federal and state governments are responding to public demands for coastline preservation, much work remains to be done in order to ensure that this laudable goal will in fact be achieved. Effective laws to protect America's coastline must restrain short-range development with effective interim controls, must encourage public participation and enforcement by allowing the maintenance of citizen suits, and, in the case of federal legislation, must mandate state compliance in establishing coastal zone management programs. Bureaucratic inertia and the cupidity of private developmental interests (walking close at hand) must not be allowed to destroy in this generation the irreplaceable resources which must be preserved for generations to come.

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A Case Study in Forest Service Decision Making, 2 *ECOLOGY L.Q.* 493 (1972); *Comment, Conservationist's Standing to Challenge The Actions of Federal Agencies*, 1 *ECOLOGY L.Q.* 305 (1971).

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